

CHANGE REQUEST COVER SHEET

Change Request Number: 10-93A

Date Received: 9/16/2010

Title: Inflation Adjustment of Procurement-Related Thresholds

Name: Larry Wyborski

Phone: 202-493-4638

Policy OR Guidance: Guidance

Section/Text Location Affected: T3.3.1.A.10, T3.4.1.A.3, T3.6.1.A.7

Summary of Change: Threshold adjustments in AMS.

Reason for Change: Reassessment of AMS Part 3 Thresholds Due to a Statutory Requirement and Associated Government-wide Changes.

Development, Review, and/or Concurrence: FAA Small Business Office.

Target Audience: FAA Contracting Offices.

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS EDITED:

Procurement Guidance:

T3.3.1 - Contract Funding, Financing & Payment

Contract Funding, Financing & Payment

Section 10 : Financing Payment [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.4.1 - Bonds and Insurance

Bonds and Insurance

Section 3 : Bonds [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.6.1 - Small Business Development Program

Small Business Development

Section 7 : Contract Bundling [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 10 : Financing Payment

Old Content: Procurement Guidance:

T3.3.1 - Contract Funding, Financing & Payment

Contract Funding, Financing & Payment

Section 10 : Financing Payment

a. Prudent contract financing can be a useful working tool in FAA acquisitions. FAA financing may be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing. Any undue risk of monetary loss to FAA through the financing must be avoided.

b. "Contract financing" is a contractual authorization for payments to a contractor prior to acceptance of products or services by FAA. Contract financing includes advance payments.

c. Contract financing methods are intended to be self-liquidating through contract performance. FAA may only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets.

d. Advance payments are the least preferred method of contract financing and must be authorized sparingly. They should be authorized only if partial payments or progress payments are not feasible and private financing is not reasonably available.

(1) Payments under time-and-material or cost-reimbursement contracts made to small businesses in advance of payment to their vendors or subcontractors are not considered advance payments under this subpart. The items authorized for advance payment below do not require additional review and approval, while all others not identified below require submittal to the Chief of the Contracting Office (COCO) for approval:

- (a) Rent (leases, and rental agreements, including meeting and lodging room rentals);
- (b) Tuition and conference registration fees;
- (c) Insurance premiums;
- (d) Extension or connection of public utilities for FAA buildings or installations;
- (e) Subscriptions to publications - interpreted to include electronic methods of data recording. Software subscription services are therefore authorized;
- (f) Purchases of products or services in foreign countries and the advance payment is required by the laws or regulations of the foreign country concerned;
- (g) Advance payments to Federal agencies;
- (h) Advance payments that do not exceed \$10,000 or an equivalent amount in foreign currency;
- (i) Expense of investigations in foreign countries;
- (j) Enforcement of the customs or narcotics laws; or
- (k) Other types of transactions excluded by agency procedures under statutory authority.

(2) The CO should transmit the following together with a recommendation of approval of a contractor's request for advance payment to the COCO:

- (a) A summary of the solicitation or contract requirements;
- (b) Comments on the contractor's need for advance payments and potential benefits to FAA from providing advance payments;
- (c) CO's proposed actions to minimize FAA's risk of loss including proposed advance payment contract terms; and
- (d) Justification of any proposal for waiver of interest charges.

(3) FAA should charge interest on advance payments received in excess of the Contractor's current needs, except for awards made to state governments, or instrumentalities thereof. The interest will be charged at the Department of Treasury current value of funds rate. The COCO may authorize advance payments without interest if in FAA's interest.

(4) Letters of Credit are not authorized at FAA.

(5) Payments will be made by electronic funds transfer whenever possible. The advance financing arrangement may be terminated if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In lieu of termination, the CO will require the contractor to not request FAA funds until the contractor's checks are ready to be forwarded to the payees. Advance payments may be processed as follows:

(a) 30-Day Advance: The contractor is authorized to request, in writing, FAA funds in amounts needed to cover its own disbursements of cash in the next 30 calendar days for contract performance. The contractor's request typically requires 30 calendar days for processing. The 30-day advance is the preferred method of providing advance funds to a contractor.

(b) 3-Day Advance: The contractor is authorized to request FAA funds in amounts needed to cover its own disbursements of cash in the next 3 working days for contract performance. When this payment method is selected, FAA will deposit funds in the contractor's designated account within 3 working days after receipt of the request by the FAA accounting office. This method of providing advance funds to a contractor is the least preferred method and will be used sparingly.

New Content: Procurement Guidance:

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Section 3 : Bonds

Old Content: Procurement Guidance:

T3.4.1 - Bonds and Insurance

Bonds and Insurance

Section 3 : Bonds

a. *General.*

(1) *Requirement* . Bonds are not generally applicable to non-construction contracts but may be used if the contracting officer determines that such bonds are necessary to protect

the interests of the FAA. The Miller Act (40 U.S.C.A Section 3131) requires performance and payment bonds for construction contracts exceeding \$100,000. The contracting officer may waive performance and payment bonds as authorized by the Miller Act or other law if in the best interest of the Government.

(2) *SIR Requirements.* The SIR should describe the bond requirements.

(3) *Penal Amount.* The penal amount should reflect the minimum amount needed to protect the FAA's interests.

(4) *Additional Amounts of Protection.* The contracting officer may increase the bond requirements if the contract amount increases and the contracting officer deems it to be in the best interest of the FAA.

(5) *Notice to Proceed.* If the contract requires bonds, insurance, reinsurance or other forms of protection, the contractor must furnish them to the contracting officer in the time specified in the schedule. The contracting officer may consider these submissions in determining when to issue a notice to proceed.

(6) *Original Copy.* An original signed copy of any bond must be retained in the solicitation or contract file.

(7) *Authority of Agents.* Bonds signed by persons acting in a representative capacity must be accompanied by proof that the agent is authorized to act in that capacity. Proof may be a notarized power of attorney, or a properly executed corporate certificate or resolution, attested to by the corporate secretary.

(8) *Partnership as Principal.* When a partnership is a principal, the names of all members of the firm must be listed in the bond, following the trade name of the firm (if any) and the phrase "a partnership composed of ." When a corporation is a principal, the state of the incorporation should be listed.

(9) *Date.* Unless an annual bond is accepted, performance or payment bonds should be dated after the date of the contract.

(10) *Furnishing Information to Subcontractors and Suppliers Under Payment Bonds.* When a payment bond has been provided, the contracting officer may furnish the name and address of the surety or sureties to persons who have furnished, or have been requested to furnish, labor or materials for use in performing the contract. The contracting officer may furnish additional general information on such matters as the progress of work, the payments made, and the estimated percentage of completion.

(11) *Contract Increases.* When a contract price is increased or scope changes, the FAA may require additional bond protection in an amount adequate to protect suppliers of labor and material. Both the contractor and sureties should execute a consent of surety increasing the penal amount and submit it to the CO.

(12) *Surety Changes*. The original surety must execute a consent of surety in instances where an increased bond amount is obtained from a party other than the original surety.

(13) *Novations*. Novations require a consent of surety.

b. *Construction Contracts - Performance and Payment Bonds*

(1) *Penal Sums*

(a) *Requirements Contracts*. When determining the penal sum of bonds for requirements contracts, the contracting officer may consider the contract price to be the price payable for the estimated quantity.

(b) *Indefinite Quantity Contracts*. When determining the penal sum of bonds for indefinite-quantity contracts, the contracting officer should consider the contract price to be the price payable for the specified minimum quantity. When the minimum quantity is exceeded, additional amounts of performance and payment protection may be obtained as stated under performance and payment bond.

(2) *Performance Bonds*

(a) *Penal Amounts*. Penal amounts should generally be 100 percent of the original contract price, unless the contracting officer determines that a lesser amount would be adequate for the protection of the FAA. If a lesser amount is used, the clauses should be tailored to the situation. If the contract price increases, an additional amount equal to 100 percent of the increase shall be obtained.

(b) *Additional Amounts of Protection*. The contracting officer may increase the amount up to 100 percent of the increase in contract price.

(3) *Payment Bonds*

(a) *Requirement*. A payment bond is required only when a performance bond is required but may be used without a performance bond if the contracting officer deems the use of payment bond to be in the FAA's interest. Examples of situations where a payment bond may be needed include:

(i) Supplies or services are unique to the FAA that can be obtained only from a source that is not the producer of the supplies or services

(ii) A contractor has sold all its assets to, or merged with, another firm and the FAA needs assurance of the new firm's responsibility

(iii) Uninterrupted provision of the supplies or services is essential to the continued operation of FAA functions.

(b) *Penal Amounts.*

(i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal:

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of the increase.

(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) *Furnishing Information to Subcontractors and Suppliers.* The contracting officer may furnish the name and address of the surety or sureties to persons who have furnished, or have been requested to furnish, labor or materials for use in performing the contract. The CO may furnish additional general information on such matters as the progress of work, the payments made and the estimated percentage of completion, if available.

c. *Other Than Construction Contracts -Performance and Payment Bonds*

(1) *Annual Performance Bonds (APB).* APB may be used for nonconstruction contracts only and should be applicable to the total of all covered contracts. The bond may be modified to cover new requirements.

(2) *Performance Bonds.* Performance bonds may be used if the contracting officer deems it necessary to protect the FAA's interest. The following situations may warrant a performance bond:

(a) FAA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

(b) A contractor sells assets to or merges with another concern, and the FAA after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(c) Substantial payments are made before delivery of end items starts.

(d) Contracts are for dismantling, demolition, or removal of improvements.

(3) *Payment Bonds.* A payment bond is required only when a performance bond is required and if the contracting officer deems the use of payment bond to be in the FAA's interest.

d. *Other Types of Bonds.* The contracting officer may use other types of bonds, such as patent infringement bonds (Clause 3.4.1-8, Patent Infringement Bond Requirements), deemed necessary to protect the interests of the FAA.

e. *Sureties.* This subsection describes the use of sureties to protect the Government from financial losses.

(1) *Requirements for Sureties.* Bonds must be supported by acceptable corporate sureties, or by assets acceptable as security for the contractor's obligation. The Contracting Officer should assure that adequate security for bonds is obtained to protect the interest of the FAA.

(2) *Corporate Sureties.* Corporate sureties must appear on the list contained in the Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." The amount of the bond may not exceed the underwriting limit stated for the surety in that list. Upon receipt of notification of termination of a company's authority to qualify as a surety on Federal bonds, the contracting officer shall review the outstanding contracts and take action necessary to protect the Government, including, where appropriate, securing new bonds with acceptable sureties in lieu of outstanding bonds with the named company.

(3) *Individual Sureties.* Individual sureties are discouraged.

(4) *Alternative Security.* Alternative security is not permitted for payment bonds for construction contracts. For other than payment bonds for construction contracts, the CO may accept the following alternative security in place of bonds and require the deposit of the assets as specified herein. Further, for bonds that do not use sureties as the security for the bond, the bond should include a statement pledging and identifying the security that will be used to support the bond. The contractor shall execute the bond form as the principal. Other types of alternative security than those described herein may not be used. The following are considered to be acceptable assets are:

(a) *Bonds or Notes.* U.S. bonds or notes maturing in less than 5 years from the date of contract, together with an agreement authorizing collection or sale in the event of default may be used. The par value of the bonds or notes must be at least equal to the penal amount of the bond. U.S. bonds or notes should be deposited in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 (31 U.S.C. 9303) and Treasury Department Circular No. 154 dated July 1, 1978 (31 CFR Part 225)). The CO may turn the securities over to a designated agency official or deposit them with the Treasurer of the U.S. or other institution designated by the Treasurer.

(b) *Other Types of Assets.* Certified check, cashier's check, bank draft, postal money order, or an irrevocable, unconditional letter of credit (see OFPP Pamphlet No.7 "Guidance for Implementing Policy Letter 91-4" as guidance for using

irrevocable letters of credit) issued by a federally insured financial institution is another type of asset that may be used as security. The deposit must be at least equal to the penal amount of the surety bond, and payable solely to the order of the FAA. The CO must deposit checks and drafts made out to the FAA with the designated official in the FAA with instructions to hold the funds for the benefit of the contractor. The procuring activity should establish records to account for all deposited items, such as the requiring the senior CO of the procuring activity to keep a perpetual inventory of all deposited items.

(c) *Bond Representations*. When the contractor pledges assets instead of providing a surety bond, the contractor must complete the bond form as principal and the bond form must describe the assets pledged.

(5) *Contract Administration*.

(a) *Information and Notices to Surety(ies)*. The CO may furnish the following information to each surety upon request:

(i) correspondence related to -terminations, renewals,-nonperformance;

(ii) information indicating the surety's potential liability for contractor's performance failure such as notice of impending termination, demand for adequate assurances, assessment of liquidated, or other damages;

(iii) claims against the surety based upon the contractor's failure to perform that addresses the reasons and amount of the claim. Legal assistance may be engaged if the surety fails to pay. The CO may also provide other information in response to requests related to contractor performance and payment.

(b) *Surety Takeover in Performance Failure*. The CO may consider any surety proposal to complete the work prior to terminating a contract. The CO may allow the surety to complete the work if the CO has reason to believe that the firms or individuals proposed by the surety are capable to perform the work.

(c) *Contract Completion*.

(i) *Certificate of Completion*. After the contractor has met all the contractual obligations, the CO may issue a Certificate of Completion to any surety. The certificate's terms may not release the surety from obligation under a payment bond.

(ii) *Asset Refund*. If alternative security was furnished, the CO should refund the assets under a payment bond upon completion of the work and receipt of a contractor's release.

(iii) *Substantial Completion Under Construction Contracts*. Upon request, the CO should furnish a Certificate of Substantial Completion to sureties of a construction contractor if the project has been determined to be substantially complete.

New Content: Procurement Guidance:

T3.4.1 - Bonds and Insurance

Bonds and Insurance

Section 3 : Bonds

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(2) *SIR Requirements*. The SIR should describe the bond requirements.

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(5) *Notice to Proceed*. If the contract requires bonds, insurance, reinsurance or other forms of protection, the contractor must furnish them to the contracting officer in the time specified in the schedule. The contracting officer may consider these submissions in determining when to issue a notice to proceed.

(6) *Original Copy*. An original signed copy of any bond must be retained in the solicitation or contract file.

(7) *Authority of Agents*. Bonds signed by persons acting in a representative capacity must be accompanied by proof that the agent is authorized to act in that capacity. Proof may be a notarized power of attorney, or a properly executed corporate certificate or resolution, attested to by the corporate secretary.

(8) *Partnership as Principal*. When a partnership is a principal, the names of all members of the firm must be listed in the bond, following the trade name of the firm (if any) and the phrase "a partnership composed of ." When a corporation is a principal, the state of the incorporation should be listed.

(9) *Date*. Unless an annual bond is accepted, performance or payment bonds should be dated after the date of the contract.

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(3) *Individual Sureties*. Individual sureties are discouraged.

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(a) *Bonds or Notes.* U.S. bonds or notes maturing in less than 5 years from the date of contract, together with an agreement authorizing collection or sale in the event of default may be used. The par value of the bonds or notes must be at least equal to the penal amount of the bond. U.S. bonds or notes should be deposited in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 (31 U.S.C. 9303) and Treasury Department Circular No. 154 dated July 1, 1978 (31 CFR Part 225)). The CO may turn the securities over to a designated agency official or deposit them with the Treasurer of the U.S. or other institution designated by the Treasurer.

(b) *Other Types of Assets.* Certified check, cashier's check, bank draft, postal money order, or an irrevocable, unconditional letter of credit (see OFPP Pamphlet No.7 "Guidance for Implementing Policy Letter 91-4" as guidance for using irrevocable letters of credit) issued by a federally insured financial institution is another type of asset that may be used as security. The deposit must be at least equal to the penal amount of the surety bond, and payable solely to the order of the FAA. The CO must deposit checks and drafts made out to the FAA with the designated official in the FAA with instructions to hold the funds for the benefit of the contractor. The procuring activity should establish records to account for all deposited items, such as the requiring the senior CO of the procuring activity to keep a perpetual inventory of all deposited items.

(c) *Bond Representations.* When the contractor pledges assets instead of providing a surety bond, the contractor must complete the bond form as principal and the bond form must describe the assets pledged.

(5) *Contract Administration.*

(a) *Information and Notices to Surety(ies).* The CO may furnish the following information to each surety upon request:

(i) correspondence related to -terminations, renewals,-nonperformance;

(ii) information indicating the surety's potential liability for contractor's performance failure such as notice of impending termination, demand for adequate assurances, assessment of liquidated, or other damages;

(iii) claims against the surety based upon the contractor's failure to perform that addresses the reasons and amount of the claim. Legal assistance may be engaged if the surety fails to pay. The CO may also provide other information in response to requests related to contractor performance and payment.

(b) *Surety Takeover in Performance Failure.* The CO may consider any surety proposal to complete the work prior to terminating a contract. The CO may allow

the surety to complete the work if the CO has reason to believe that the firms or individuals proposed by the surety are capable to perform the work.

(c) *Contract Completion.*

(i) *Certificate of Completion.* After the contractor has met all the contractual obligations, the CO may issue a Certificate of Completion to any surety. The certificate's terms may not release the surety from obligation under a payment bond.

(ii) *Asset Refund.* If alternative security was furnished, the CO should refund the assets under a payment bond upon completion of the work and receipt of a contractor's release.

(iii) *Substantial Completion Under Construction Contracts.* Upon request, the CO should furnish a Certificate of Substantial Completion to sureties of a construction contractor if the project has been determined to be substantially complete.

Red Line Content: Procurement Guidance:

T3.4.1 - Bonds and Insurance

Bonds and Insurance

Section 3 : Bonds

a. *General.*

(1) *Requirement .* Bonds are not generally applicable to non-construction contracts but may be used if the contracting officer determines that such bonds are necessary to protect the interests of the FAA. The Miller Act (40 U.S.C.A Section 3131) requires performance and payment bonds for construction contracts exceeding \$~~100~~150,000. The contracting officer may waive performance and payment bonds as authorized by the Miller Act or other law if in the best interest of the Government.

(2) *SIR Requirements.* The SIR should describe the bond requirements.

(3) *Penal Amount.* The penal amount should reflect the minimum amount needed to protect the FAA's interests.

(4) *Additional Amounts of Protection.* The contracting officer may increase the bond requirements if the contract amount increases and the contracting officer deems it to be in the best interest of the FAA.

(5) *Notice to Proceed.* If the contract requires bonds, insurance, reinsurance or other forms of protection, the contractor must furnish them to the contracting officer in the time specified in the schedule. The contracting officer may consider these submissions in determining when to issue a notice to proceed.

(6) *Original Copy*. An original signed copy of any bond must be retained in the solicitation or contract file.

(7) *Authority of Agents*. Bonds signed by persons acting in a representative capacity must be accompanied by proof that the agent is authorized to act in that capacity. Proof may be a notarized power of attorney, or a properly executed corporate certificate or resolution, attested to by the corporate secretary.

(8) *Partnership as Principal*. When a partnership is a principal, the names of all members of the firm must be listed in the bond, following the trade name of the firm (if any) and the phrase "a partnership composed of ." When a corporation is a principal, the state of the incorporation should be listed.

(9) *Date*. Unless an annual bond is accepted, performance or payment bonds should be dated after the date of the contract.

(10) *Furnishing Information to Subcontractors and Suppliers Under Payment Bonds*. When a payment bond has been provided, the contracting officer may furnish the name and address of the surety or sureties to persons who have furnished, or have been requested to furnish, labor or materials for use in performing the contract. The contracting officer may furnish additional general information on such matters as the progress of work, the payments made, and the estimated percentage of completion.

(11) *Contract Increases*. When a contract price is increased or scope changes, the FAA may require additional bond protection in an amount adequate to protect suppliers of labor and material. Both the contractor and sureties should execute a consent of surety increasing the penal amount and submit it to the CO.

(12) *Surety Changes*. The original surety must execute a consent of surety in instances where an increased bond amount is obtained from a party other than the original surety.

(13) *Novations*. Novations require a consent of surety.

b. *Construction Contracts - Performance and Payment Bonds*

(1) *Penal Sums*

(a) *Requirements Contracts*. When determining the penal sum of bonds for requirements contracts, the contracting officer may consider the contract price to be the price payable for the estimated quantity.

(b) *Indefinite Quantity Contracts*. When determining the penal sum of bonds for indefinite-quantity contracts, the contracting officer should consider the contract price to be the price payable for the specified minimum quantity. When the minimum quantity is exceeded, additional amounts of performance and payment protection may be obtained as stated under performance and payment bond.

(2) *Performance Bonds*

(a) *Penal Amounts.* Penal amounts should generally be 100 percent of the original contract price, unless the contracting officer determines that a lesser amount would be adequate for the protection of the FAA. If a lesser amount is used, the clauses should be tailored to the situation. If the contract price increases, an additional amount equal to 100 percent of the increase shall be obtained.

(b) *Additional Amounts of Protection.* The contracting officer may increase the amount up to 100 percent of the increase in contract price.

(3) *Payment Bonds*

(a) *Requirement.* A payment bond is required only when a performance bond is required but may be used without a performance bond if the contracting officer deems the use of payment bond to be in the FAA's interest. Examples of situations where a payment bond may be needed include:

(i) Supplies or services are unique to the FAA that can be obtained only from a source that is not the producer of the supplies or services

(ii) A contractor has sold all its assets to, or merged with, another firm and the FAA needs assurance of the new firm's responsibility

(iii) Uninterrupted provision of the supplies or services is essential to the continued operation of FAA functions.

(b) *Penal Amounts.*

(i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal:

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of the increase.

(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) *Furnishing Information to Subcontractors and Suppliers.* The contracting officer may furnish the name and address of the surety or sureties to persons who have furnished, or have been requested to furnish, labor or materials for use in performing the contract. The CO may furnish additional general information on such matters as the progress of work, the payments made and the estimated percentage of completion, if available.

c. Other Than Construction Contracts -Performance and Payment Bonds

(1) *Annual Performance Bonds (APB)*. APB may be used for nonconstruction contracts only and should be applicable to the total of all covered contracts. The bond may be modified to cover new requirements.

(2) *Performance Bonds*. Performance bonds may be used if the contracting officers deems it necessary to protect the FAA's interest. The following situations may warrant a performance bond:

(a) FAA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

(b) A contractor sells assets to or merges with another concern, and the FAA after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(c) Substantial payments are made before delivery of end items starts.

(d) Contracts are for dismantling, demolition, or removal of improvements.

(3) *Payment Bonds*. A payment bond is required only when a performance bond is required and if the contracting officer deems the use of payment bond to be in the FAA's interest.

d. *Other Types of Bonds*. The contracting officer may use other types of bonds, such as patent infringement bonds (Clause 3.4.1-8, Patent Infringement Bond Requirements), deemed necessary to protect the interests of the FAA.

e. *Sureties*. This subsection describes the use of sureties to protect the Government from financial losses.

(1) *Requirements for Sureties*. Bonds must be supported by acceptable corporate sureties, or by assets acceptable as security for the contractor's obligation. The Contracting Officer should assure that adequate security for bonds is obtained to protect the interest of the FAA.

(2) *Corporate Sureties*. Corporate sureties must appear on the list contained in the Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." The amount of the bond may not exceed the underwriting limit stated for the surety in that list. Upon receipt of notification of termination of a company's authority to qualify as a surety on Federal bonds, the contracting officer shall review the outstanding contracts and take action necessary to protect the Government, including, where appropriate, securing new bonds with acceptable sureties in lieu of outstanding bonds with the named company.

(3) *Individual Sureties.* Individual sureties are discouraged.

(4) *Alternative Security.* Alternative security is not permitted for payment bonds for construction contracts. For other than payment bonds for construction contracts, the CO may accept the following alternative security in place of bonds and require the deposit of the assets as specified herein. Further, for bonds that do not use sureties as the security for the bond, the bond should include a statement pledging and identifying the security that will be used to support the bond. The contractor shall execute the bond form as the principal. Other types of alternative security than those described herein may not be used. The following are considered to be acceptable assets are:

(a) *Bonds or Notes.* U.S. bonds or notes maturing in less than 5 years from the date of contract, together with an agreement authorizing collection or sale in the event of default may be used. The par value of the bonds or notes must be at least equal to the penal amount of the bond. U.S. bonds or notes should be deposited in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 (31 U.S.C. 9303) and Treasury Department Circular No. 154 dated July 1, 1978 (31 CFR Part 225)). The CO may turn the securities over to a designated agency official or deposit them with the Treasurer of the U.S. or other institution designated by the Treasurer.

(b) *Other Types of Assets.* Certified check, cashier's check, bank draft, postal money order, or an irrevocable, unconditional letter of credit (see OFPP Pamphlet No.7 "Guidance for Implementing Policy Letter 91-4" as guidance for using irrevocable letters of credit) issued by a federally insured financial institution is another type of asset that may be used as security. The deposit must be at least equal to the penal amount of the surety bond, and payable solely to the order of the FAA. The CO must deposit checks and drafts made out to the FAA with the designated official in the FAA with instructions to hold the funds for the benefit of the contractor. The procuring activity should establish records to account for all deposited items, such as the requiring the senior CO of the procuring activity to keep a perpetual inventory of all deposited items.

(c) *Bond Representations.* When the contractor pledges assets instead of providing a surety bond, the contractor must complete the bond form as principal and the bond form must describe the assets pledged.

(5) *Contract Administration.*

(a) *Information and Notices to Surety(ies).* The CO may furnish the following information to each surety upon request:

(i) correspondence related to -terminations, renewals,-nonperformance;

(ii) information indicating the surety's potential liability for contractor's performance failure such as notice of impending termination, demand for adequate assurances, assessment of liquidated, or other damages;

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(i) *Certificate of Completion.* After the contractor has met all the contractual obligations, the CO may issue a Certificate of Completion to any surety. The certificate's terms may not release the surety from obligation under a payment bond.

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(iii) *Substantial Completion Under Construction Contracts.* Upon request, the CO should furnish a Certificate of Substantial Completion to sureties of a construction contractor if the project has been determined to be substantially complete.

Section 7 : Contract Bundling

Old Content: Procurement Guidance:

T3.6.1 - Small Business Development Program

Small Business Development

Section 7 : Contract Bundling

a. Definitions:

(1) A bundled contract is a contract that is entered into to meet requirements that are consolidated.

(2) Bundling is consolidation of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into

a SIR for a single contract that renders a contract likely to be unsuitable for award to a small business concern (including socially and economically disadvantaged (8(a)), small disadvantaged, and women-owned businesses) due to:

- (a) The diversity, size, or specialized nature of the elements of the performance specified;
- (b) The aggregate dollar value of the anticipated award;
- (c) The geographical dispersion of the contract performance sites; or
- (d) Any combination of the factors described in paragraphs (2)(i), (ii), and (iii) of this definition.

(3) Measurably Substantial Benefits are the dollar amount of benefits accruing from the bundling of requirements. These benefits can be in many forms to include cost savings, price reduction, quality efficiency, enhance performance, result in better terms and conditions, reduce acquisition cycle times and any other benefits

b. This section is not applicable to contracts whose total estimated bundled value (including all options) is less than \$10 Million.

c. Bundling of contractual requirements is discouraged unless it is necessary and justified. Bundling is necessary and justified if there are substantial benefits which are measurable and quantifiable. The service team shall document the measurably substantial benefits to the Government . Benefits shall be equivalent to 10% if the total anticipated contract value is \$75 million or less; or 5% if the contract value exceeds \$75 million.

d. To ensure that prime contract opportunities are provided to small businesses, the following alternatives shall be considered prior to bundling:

- (1) Breaking up the procurement into smaller discrete procurements to render them suitable for small business set asides;
 - (a) Breaking out discrete components, where practicable, to be set aside for small business; or
 - (b) When issuing multiple awards against a single solicitation, reserving one or more awards for small businesses.

e. If a service team determines that contract bundling is to be used, the service team shall so inform the administrator and include written justification in the file (a part of the acquisition strategy plan, separate memo, etc.) outlining the need for bundling and documenting the impact on attaining the FAA socioeconomic goals. Additionally, if bundling would result in any adverse impact to achievement of the agency's socio-economic goals, the SIR for the bundled procurement must be approved by the FAA Acquisition Executive (FAE).

In addition, the service team shall notify the local Small Business Development Program Office (SBDPO) prior to issuance of the SIR.

f. In a bundled procurement, the acquisition strategy should provide for maximum practicable participation by small business concerns. Some of the ways this can be accomplished include the following:

(1) Authorizing two or more small businesses to form a contract team and for that team to be considered a small business for purposes of a bundled requirement provided that each small business partner to the teaming arrangement individually qualifies as a small business under the assigned NAIC codes for the requirement.

(2) For SIRs that offer a significant opportunity for subcontracting, the CO should include proposed small business, small disadvantaged business and women-owned business subcontracting participation in the subcontracting plan as an evaluation factor.

(3) Including small business, small disadvantaged business and women-owned subcontracting goals in SIRs and contracts based on contract dollars versus planned subcontracting dollars.

(4) Consulting the local SBDPO and Source Net.

g. The requirements of this section do not apply to bundled contracts that are awarded in accordance with OMB Circular A-76 if a cost comparison has been performed under A-76 procedures.

h. The requirements of this section do not apply to contracts to be awarded and performed entirely outside of the United States.

New Content: Procurement Guidance:

T3.6.1 - Small Business Development Program

Small Business Development

Section 7 : Contract Bundling

a. Definitions:

(1) A bundled contract is a contract that is entered into to meet requirements that are consolidated.

(2) Bundling is consolidation of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a SIR for a single contract that renders a contract likely to be unsuitable for award to a small business concern (including socially and economically disadvantaged (8(a)), small disadvantaged, and women-owned businesses) due to:

- (a) The diversity, size, or specialized nature of the elements of the performance specified;
- (b) The aggregate dollar value of the anticipated award;
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(3) Measurably Substantial Benefits are the dollar amount of benefits accruing from the bundling of requirements. These benefits can be in many forms to include cost savings, price reduction, quality efficiency, enhance performance, result in better terms and conditions, reduce acquisition cycle times and any other benefits

b. This section is not applicable to contracts whose total estimated bundled value (including all options) is less than \$10 Million.

c. Bundling of contractual requirements is discouraged unless it is necessary and justified. Bundling is necessary and justified if there are substantial benefits which are measurable and quantifiable. The service team shall document the measurably substantial benefits to the Government . Benefits shall be equivalent to 10% if the total anticipated contract value is \$94 million or less; or 5% if the contract value exceeds \$94 million.

d. To ensure that prime contract opportunities are provided to small businesses, the following alternatives shall be considered prior to bundling:

- (1) Breaking up the procurement into smaller discrete procurements to render them suitable for small business set asides;
 - (a) Breaking out discrete components, where practicable, to be set aside for small business; or
 - (b) When issuing multiple awards against a single solicitation, reserving one or more awards for small businesses.

e. If a service team determines that contract bundling is to be used, the service team shall so inform the administrator and include written justification in the file (a part of the acquisition strategy plan, separate memo, etc.) outlining the need for bundling and documenting the impact on attaining the FAA socioeconomic goals. Additionally, if bundling would result in any adverse impact to achievement of the agency's socio-economic goals, the SIR for the bundled procurement must be approved by the FAA Acquisition Executive (FAE).

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(2) For SIRs that offer a significant opportunity for subcontracting, the CO should include proposed small business, small disadvantaged business and women-owned business subcontracting participation in the subcontracting plan as an evaluation factor.

(3) Including small business, small disadvantaged business and women-owned subcontracting goals in SIRs and contracts based on contract dollars versus planned subcontracting dollars.

(4) Consulting the local SBDPO and Source Net.

g. The requirements of this section do not apply to bundled contracts that are awarded in accordance with OMB Circular A-76 if a cost comparison has been performed under A-76 procedures.

h. The requirements of this section do not apply to contracts to be awarded and performed entirely outside of the United States.

Red Line Content: Procurement Guidance:

T3.6.1 - Small Business Development Program

Small Business Development

Section 7 : Contract Bundling

a. Definitions:

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b. This section is not applicable to contracts whose total estimated bundled value (including all options) is less than \$10 Million.

c. Bundling of contractual requirements is discouraged unless it is necessary and justified. Bundling is necessary and justified if there are substantial benefits which are measurable and quantifiable. The service team shall document the measurably substantial benefits to the Government . Benefits shall be equivalent to 10% if the total anticipated contract value is \$7594 million or less; or 5% if the contract value exceeds \$7594 million.

d. To ensure that prime contract opportunities are provided to small businesses, the following alternatives shall be considered prior to bundling:

- (1) Breaking up the procurement into smaller discrete procurements to render them suitable for small business set asides;
 - (a) Breaking out discrete components, where practicable, to be set aside for small business; or
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g. The requirements of this section do not apply to bundled contracts that are awarded in accordance with OMB Circular A-76 if a cost comparison has been performed under A-76 procedures.

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